IN THE HIGH COURT OF JUDICATURE OF BOMBAY

ORDINARY ORIGINAL CIVIL JURISDICTION

COMPANY PETITION NO.167 OF 2003

Mr.Jayant S. Joshi. ..Petitioner.

V/s.

Apte Amalgamations Ltd. ..Respondent.

Mr.Vilas D'Souza i/b.Ms.Nita Madhwani for petitioner.

None for respondent.

CORAM: A.M.KHANWILKAR,J

DATE : DECEMBER 17, 2007.

P.C. :

1. None appears for the Respondent though served. In fact the Respondent has entered appearance through advocate and also filed affidavit dated 19th August, 2003. However, that affidavit merely indicates that the Respondent company is before BIFR. In view of the recent on-line status report made available by the Office, it is noticed that the BIFR proceedings in respect of the Respondent company have been dropped as the net worth of the Respondent company has turned positive. In the circumstances, this Petition, which is pending for admission since 2003 shall have to proceed on merits. However, as aforesaid, none appears for the Respondent company, nor any reply has been filed to

controvert the assertions made in the Petition on merit.

2. The Petitioner asserts that he was appointed as Company Secretary on agreed terms and conditions. It is the case of the Petitioner that the Petitioner eventually resigned from the service. The Petitioner at the relevant time was entitled to receive sum of Rs.2,12,868/- under different heads. The statement of claim appended by the Petitioner at Exh. H spells out different heads, against which the Petitioner became entitled to receive from the Respondent company. It is stated that after resignation, the Petitioner was paid only sum of Rs.57,000/-. As a result, the balance outstanding amount receivable by the Petitioner from the Respondent company was in the sum of Rs.2,12,868/- as of 18th November, 2000. Inspite of repeated reminders as the Respondent company failed to pay any amount Petitioner sent statutory notice and also demanded interest at the rate of 18% per annum from 18th November, 2000 on the outstanding dues.

3. The statutory notice was duly served on the Respondent. However, the Respondent failed to pay any amount to the Petitioner. Eventually, the

Petitioner has filed present Petition. As aforesaid, the present Petition is duly served on the Respondent. But no reply on merit has been filed so far, nor there is anything on record to suggest that the Respondent company paid further amount to the Petitioner after institution of the present Petition. The fact that the Petitioner is entitled to receive a sum of Rs.2,12,868/-, being principal amount, has not been disputed by the Respondent. Inspite of the statutory notice as the Respondent failed to pay amount, it necessarily follows that the Respondent is unable to pay its debt. The fact that the Respondent was before BIFR, presupposes that the Respondent conceded the position that net worth of the Respondent company had eroded.

4. Taking any view of the matter, no explanation is forthcoming from the Respondent for its inability to pay the outstanding dues to the Petitioner. In the circumstances, this Petition is admitted on following condition.

5. The Respondent shall deposit sum of Rs.3 Lakhs in this Court within 8 weeks from the date of intimation of this Order. If the amount is deposited, the Petitioner will be free to withdraw

the same, in which the case, the Petition to stand disposed off.

6. In the event, the Respondent fails to deposit the amount of Rs.three lakhs in time, the Petition to stand admitted, in which case, the Petitioner shall advertise the admission of the Petition in two local news papers, namely "Free Press Journal", and in the Maharashtra Government Gazette. The Petitioner shall deposit an amount of Rs.10,000/- with the Prothonotary & Senior Master towards the publication charges, within three weeks with intimation to the Company Registrar failing which the Petition shall stand dismissed for non-prosecution.

7. The Petitioner to forthwith inform the Respondent about the contents of the order passed today.

(A.M.KHANWILKAR,J)